

DOD INSPECTOR GENERAL REFERENCES

I. REFERENCES

- A. “Inspector General Act of 1978,” Appendix 3 of Title 5, United States Code
- B. DoD Directive 5106.01, “Inspector General of the Department of Defense,” April 13, 2006
- C. DoD Instruction 7050.3, “Access to Records and information by the IG DoD,” April 24, 2000
- D. DoD Instruction 5525.07, “Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes,” June 18, 2007
- E. DoD Instruction 7050.01, “Defense Hotline Program,” December 17, 2007
- F. DoD Directive 5505.06, “Investigations of Allegations Against Senior Officials of the Department of Defense,” April 10, 2006
- G. Section 1034 of title 10, United States Code – “Military Whistleblower Act”
- H. DoD Directive 7050.06, “Military Whistleblower Protection,” July 23, 2007
- I. DoD Directive 6490.1, “Mental Health Evaluations of Members of the Armed Forces,” October 1, 1997
- J. Section 1587 of title 10, United States Code – “NAFI Employee Whistleblower Act”
- K. DoD Directive 1401.3, “DOD Nonappropriated Fund Instrumentality (NAFI) Employee Whistleblower Protection,” October 16, 2001
- L. Section 2409 of title 10, United States Code – “Defense Contractor Employee Whistleblower Act.”
- M. Federal Acquisition Regulation, “Whistleblower Protections for Contractor Employees” 48 CFR Chapter 1
- N. DoD Directive 7650.3, “Follow-up on General Accounting Office (GAO), DoD

Ethics and the Inspector General
8th Ethics Counselor’s Course

Inspector General (DoD IG), and Internal Audit Reports,” June 3, 2004

O. DoD Directive 5148.11, “Assistant to the Secretary of Defense for Intelligence Oversight (ATSD(IO)),” May 21, 2004

P. SECNAVINST 5800.12B, “Investigations of Allegations against Senior Officials of the Department of the Navy,” 18 Oct 2005

Q. SECNAVINST 5430.57G, “Mission and Functions of the Naval Inspector General,” 29 Dec 2005

R. SECNAVINST 5370.5B, “DoN Hotline Program,” 24 Nov 2004

S. Army Regulation 20-1, “Inspector General Activities and Procedures,” CH. dtd. 1 February 2007

T. Air Force Instruction 90-201 “Inspector General Activities,” CH. 3–19 July 2007

U. 10 U.S.C. § 3020, “Inspector General” (Army)

V. 10 U.S.C. §5020, “Naval Inspector General”

W. 10 U.S.C. §8020, “Inspector General” (Air Force)

II. INTRODUCTION

The position of Inspector General (IG) has a long history in the Federal government. The IG concept originated in the military services. The Army IG was created in 1777. However, the functions and responsibilities of each service IG have never been uniform. Generally, the IGs have served in the role of ombudsman, mediator or general problem solver. Over the years the role of each service IG evolved slightly differently. Today the roles and number of personnel assigned vary among the military service IGs. While the Department of Defense Inspector General has some similar responsibilities, the core responsibilities and authorities are set out in the United States Code.

III. BACKGROUND LEADING TO THE IG ACT OF 1978

A. Between 1962 and 1974 the Department of Agriculture became the first executive branch department to experiment with a department-wide IG. Eventually most of the IG's activity involved Food Stamp fraud.

B. In the 1974 – 1975 timeframe a number of Congressional investigations examined fraud, waste and abuse in the Department of Health, Education and Welfare.

C. Congress eventually created the first non-DoD statutory IG in Health, Education and Welfare in 1976. The following year a statutory IG was created for the Department of Energy.

D. Congress revisits the issue of executive branch IGs during hearings held in 1977. The following areas of concern prompted the hearings:

1. Multiple audit/investigative units existed in executive agencies with little coordination and/or control.
2. Auditors/investigators frequently reported to officials responsible for the programs being audited or investigated.
3. Lack of investigative independence.
4. No formal and/or uniform procedure for informing Congress.
5. Long audit cycle times (9 to 10 years in some cases).
6. Limited or ineffective staffing leading to weak oversight of major programs.

IV. THE IG ACT OF 1978

A. As a result of these concerns; Congress passed the *Inspector General Act of 1978*, codified at Title 5, Appendix 3, United States Code.

1. Act created statutory IGs in 6 executive departments and various agencies. [Currently there are 57 statutory IGs, 2 of whom are Presidential appointees.]
2. Office of Management and Budget, Department of Justice and other executive branch departments and agencies were not enthusiastic about the Act's passage.

B. Important Components of the *Inspector General Act of 1978* include:

1. IGs are appointed by the President and subject to Senate confirmation.
§3(a)
2. IGs may be removed only by the President, with reasons communicated to the Congress – §3(b)
3. IGs must report criminal violations to the Attorney General – §4
4. Required Semiannual Reports to Congress – §5
5. Provided for IG access to information – §6(a)(1) & (3)
6. Subpoena authority -- §6(a)(4)
7. IG Access to Head of the Establishment – §6(a)(6)
8. Personnel and resources – §6(c)

C. The *Inspector General Act of 1978* did not create a DoD Inspector General.

1. Based on a Secretary of Defense recommendation DoD was not included in the 1978 Act.
2. Secretary of Defense argued that due to the unique size and mission of the Department further study and additional information was necessary to make a decision regarding the advisability of creating a DoD IG.
3. Secretary of Defense established a task force to conduct a study of the audit, investigation and inspection components of the DoD. The task force recommended creating a DoD IG. As an alternative, the task force recommended creating the position of “Under Secretary for Review and Oversight.” The rationale behind the proposal was that the person holding the proposed position should be solely under the supervision of the Secretary of Defense. In other words the person should be part of the “team” and not viewed as an outsider.
4. In response to the task force’s recommendations Congress reviewed the report, held additional hearings and determined that an IG was needed for DoD. Accordingly, Defense Authorization Act for FY83 (P.L. 97-252, September 8, 1982) contained an amendment to the *Inspector General Act of 1978* adding a DoD IG, among other things.

V. THE CREATION OF THE DOD IG

A. P.L. 97-252 amended IG Act of 1978 to include the DoD IG (Title 5 U.S. Code, App. 3).

B. Added new Section 8 to the IG Act that was applicable only to the DoD IG. That section delineates additional duties and responsibilities, and some potential limitations for the DoD IG alone which are separate and apart from those provided to all IGs by the IG Act of 1978.

C. Examples of additional duties and responsibilities include:

1. Principal advisor to SECDEF on detection of FWA – §8(c)(1)
2. Initiate audits and investigations within DoD as the IG considers appropriate” – §8(c)(2)
3. Provide policy guidance for audits and investigations – §8(c)(3)
4. Investigate fraud waste and abuse – §8(c)(4)
5. Develop policy for criminal investigations – §8(c)(5)
6. Develop policy on audits and monitor DoD auditors – §8(c)(6)
7. Report suspected violations of the UCMJ to SECDEF or Military Department Secretary – §8(d)
8. DoD IG shall process Intelligence Community Whistleblower Protection Act (ICWPA) complaints or information, §8H. IG must determine if a matter from an employee of one of the 4 Defense intelligence agencies (DIA, NGA, NRO, & NSA) is an “urgent concern” and if the complaint or information is credible. IG must complete inquiry within 14 days and forward it to the Secretary of Defense. Secretary has 7 days to forward the package to the Intelligence Committees of Congress.
9. Provisions of 18 U.S.C. §1385 “Posse Comitatus” do not apply to audits/investigations of DoD IG.

D. Examples of additional limitations placed on DoD IG include:

1. DoD IG cannot be in active/reserve military service – §8(a)
2. SECDEF may prohibit IG activity in certain areas – §8(b)(1) - (1) sensitive operational plans; (2) intelligence matters; (3) counterintelligence matters (4) ongoing criminal investigations by other DoD units related to national security and (5) other matters disclosure of which would be a serious threat to national security.
3. If SECDEF prohibits IG activity in any one of these five areas – DoD IG shall inform Congress within 30 days. SECDEF then has 30 days to provide reasons for prohibiting the IG activity to Congress.

VI. THE DOD IG TODAY

As of end of FY 07 – 1610 employees – worldwide broken into five primary substantive components plus a support component (i.e., Front Office, GC, Congressional Liaison).

- A. Audit – perform the primary audit functions in the Department of Defense. (746 employees)
- B. Investigations – Criminal Law Enforcement involving DoD interests (Defense Criminal Investigative Service); conduct or oversee all investigations of Senior officials in the Department; and conduct or oversee investigations of allegations of reprisal made by military and civilian persons. (469 Special Agents and other employees)
- C. Intelligence – Audit, monitor and evaluate the programs, procedures and functions of the Intelligence Community, Special Access Programs within the Department of Defense and perform oversight of the DoD Intelligence Community (46 employees)

D. Policy and Oversight – Provide policy and oversight for DoD Audit, Investigative and Hotline activities; conduct inspections of DoD programs and installations; manage the Defense Hotline; provide liaison between GAO and DoD and provide technical, statistical and quantitative support to OIG projects. (104 employees)

E. Office of Special Plans & Operations - The Office of Inspector General (OIG) supports the DoD and U.S. Congress by addressing challenging issues in an increasing complex, global defense environment. To rapidly provide assessments of these key issues for senior leaders, the OIG established the Office for Special Plans and Operations (SPO) to focus on high-value, high-visibility missions. (21 employees).

VII. INSPECTOR GENERAL REFORM ACT OF 2008 / NDAA FY 2009 P.L. 100-417, OCTOBER 14, 2008

- The Inspector General Reform Act of 2008 amended the Inspector General Act of 1978 and among various other provisions:
- It required the President and the heads of designated federal entities to communicate to Congress in writing the reasons for removing or transferring an IG no later than 30 days before such removal or transfer.
- It set the pay for presidentially appointed IGs at Executive Schedule III plus 3%. It requires IGs of designated federal entities to be classified at a grade, level, or rank designation at or above those of a majority of the senior level executives of their entity. It prohibits IGs from receiving cash awards or bonuses.
- It required each IG to: (1) appoint a counsel to the IG; (2) obtain the services of a counsel appointed by and directly reporting to another IG on a reimbursable basis; or (3) obtain the services of the Council of the Inspectors General on Integrity and Efficiency's staff on a reimbursable basis.

- It established within the executive branch the Council of the Inspectors General on Integrity and Efficiency to: (1) address integrity, economy, and effectiveness issues that transcend individual government agencies; and (2) increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the IG offices.
- It required the Council to: (1) continually identify, review, and discuss areas of weakness and vulnerability in federal programs and operations with respect to fraud, waste, and abuse; (2) develop plans for coordinated, government-wide activities that address these problems and promote economy and efficiency in federal programs and operations; (3) develop policies that will aid in the maintenance of a corps of well-trained and highly skilled IG office personnel; (4) maintain electronic systems for the benefit of all IGs and one or more academies for the professional training of auditors, investigators, inspectors, evaluators, and other personnel; (5) submit individuals' recommendations for any IG appointment to the appropriate authority; and (6) report to Congress.
- It allowed the Council's Executive Chairperson to authorize the use of interagency funding for: (1) government-wide training of IG office employees; and (2) the functions of the Integrity Committee of the Council.
- It established an Integrity Committee for the Council to review and refer for investigation allegations of wrongdoing that are made against IGs and IG office staff members.
- It required: (1) each IG to annually transmit a budget estimate and request to the head of the entity to which he or she reports; (2) such requests to specify the funds requested for operations, training needs, and Council support; (3) the head of each entity to include in a proposed budget to the President amounts for such purposes and its IG's comments on the proposal; and (4) the President to include in each U.S. budget submitted to Congress a statement of each IG's budget estimates, the amounts for such purposes requested by the President, and any comments of an IG who concludes that the budget submitted would substantially inhibit the IG from performing the duties of office.

- It required agencies to maintain on their website homepages direct links to the website of their IG office.

VIII. THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

The Chairman and the 12 Inspectors General who serve on the Recovery Board are charged in the American Recovery and Reinvestment Act of 2009 with developing a system of transparency and accountability for the \$787 billion Recovery initiative. Although only 12 agency Inspectors General serve on the Recovery Board, a total of 28 federal agencies received Recovery monies, and 29 Inspectors General are involved in oversight of those agency spending programs. As a result, the Board has worked to bring the IG community together to develop initiatives that will increase prevention activities and help minimize fraud and waste in expenditure of the Recovery funds.

POWERS & FUNCTIONS OF THE RECOVERY BOARD To fulfill its oversight mission, the Board was given specific powers and functions under the Recovery Act.

✓ Powers -The Board Can:

- Audit and review stimulus spending either on its own or in collaboration with federal Inspectors General.
- Issue subpoenas to carry out its audit and review responsibilities.
- Refer instances of fraud, waste and mismanagement to federal Inspectors General.
- Hold public hearings and compel testimony through subpoenas.
- Enter into contracts for audits, studies, analyses and other services with public agencies and private entities.

✓ Functions - The Board Shall:

- Review whether there are sufficient and qualified acquisition and grant personnel overseeing Recovery Act funds.
- Submit quarterly and annual reports to the President and Congress as well as "flash reports" on potential problems that require immediate attention.
- Make all reports publicly available through the Recovery.gov website.
- Make recommendations to federal agencies on measures to prevent fraud, waste and mismanagement of Recovery Act funds.